

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	
)	
Illinois Bell Telephone Company)	Docket No. 01-0128
)	
Investigation of Merger-Related Costs)	
and Savings Allocable to Illinois)	
Resulting From The SBC-Illinois Bell)	
Telephone Company Merger)	

EMERGENCY PETITION FOR INTERLOCUTORY REVIEW

NOW COME the People of the State of Illinois, ex rel. James E. Ryan, Attorney General of the State of Illinois, the Citizens Utility Board, by and through its attorney, the Cook County State's Attorney's Office and the City of Chicago, by and through Mara S. Georges, Corporation Counsel, (collectively, "Government and Consumer Intervenors" or "GCI") and pursuant to Section 200.520 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.520, respectfully request the Illinois Commerce Commission ("Commission") to review and reverse the decision of the Hearing Examiners setting an expedited schedule in the above-entitled docket.

GCI also requests that the Commission more specifically define the scope of this docket so that the parties may avoid adversarial disputes and delays concerning the purpose of the

proceeding and work more efficiently to further the Commission's goals. In support of its Petition, GCI state as follows:

1. In comments filed in Illinois Bell's most recent annual price cap case, Docket No. 00-0260, the Attorney General and CUB argued that the filing schedule of the annual price cap dockets, which last from April 1st to July 1st every year, were much too short to address the complex issues of merger cost and savings allocation. The CUB/AG comments explained that unless enough time was allowed for contested case procedures to be followed, interested parties would be denied the due process appropriate for a formal determination of merger-related costs and savings.

2. The Commission, in its Final Order in Docket 00-0260 ("Order"), agreed. In that decision, the Commission directed that "upon completion of the independent audit of merger related costs and savings" a separate docket be opened "...to fully explore the results of the audit of merger related costs and savings and to implement savings sharing, if any." Order at 11. Earlier in that same order, the Commission noted that the purpose of the separate merger-related costs and savings docket would be, in part, to give the parties "...the opportunity to fully explore the accounting standards developed in the independent audit, conduct discovery, present and cross-examine witnesses at a hearing and submit briefs to the Commission." Order at 9.

3. Under the Hearing Examiners' schedule in this case, the third-party auditor, Barrington Wellesley Group, Inc. ("BWG"), would submit its report and supporting testimony on March 6th, 2001 and Staff and other interested parties would submit their own testimony on March 26th. Responsive testimony would be due April 4th, hearings would take place on April

10th through 12th, initial briefs would be filed on April 25th (no time is permitted for reply briefs) and a Hearing Examiners' Proposed Order would be issued by May 18th. Exceptions would be filed thereafter and a Post Exceptions Proposed Order would be prepared by June 6th. The express purpose of this expedited schedule is to enable the Commission to reach a final decision in the instant docket by July 1, 2001.

4. While it was clearly the Commission's intention to pass along any merger-related savings to Ameritech Illinois' customers as soon as possible, the length of time needed to prepare this audit now unfortunately has precluded that otherwise desirable goal. It is GCI's understanding that the third-party auditor's report was originally anticipated to be released no later than the one-year anniversary of the Commission's merger order, in October of 2000, in order to give the Commission an opportunity to incorporate the findings of the audit into rates set in July, 2001. Presumably, the Commission may have sought a final order in this docket by July 1, 2001 without realizing that the delay in completing the auditor's report has made it impossible to keep to that schedule. The five-month delay of the auditor's report precludes the incorporation of 1999 data into the 2001 price cap filing due to the limited amount of time available for review and should not be used to justify an unfair or unnecessarily expedited proceeding to the prejudice of parties who were not responsible for this delay.

5. Furthermore, the schedule set by the Hearing Examiners is wholly inadequate to afford parties the opportunity to "fully explore the accounting standards" developed by the third-party auditor. Parties are allowed only fourteen business days¹ to analyze the auditor's

¹ Although the public version of the auditor's report became available in late January, 2001, without direction on the scope of formal proceedings and without access to the

report (including proprietary information) and pre-filed testimony, identify and obtain last-minute expert witness services, conduct discovery², prepare a direct case and prepare and finalize responsive testimony.

6. The Hearing Examiners' schedule is entirely unrealistic to accomplish the goal of a true contested case proceeding as anticipated by the Commission's 00-0260 order. It is even more unrealistic should the Commission intend that the purpose of this docket is not only to review the auditor's 1999 findings and conclusions but is also to: (1) assess the accounting, allocation and audit standards adopted by the auditors; (2) make a determination on the reasonableness of those standards; (3) evaluate the application of those standards to merger costs and savings already accrued by SBC/Ameritech in 1999 and also determine the reasonableness of those costs and savings; and (4) apply those standards to cost and savings data for 2000 and issue findings on the reasonableness of that data as well. Although 2000 data will be available for the April 1, 2001 price cap filing, a meaningful review of audited 2000 data on an expedited basis is clearly impossible, as the Commission's award of the auditing contract has not yet been finalized and the completed audit of 2000 data is not expected until October 1, 2001. Staff Report at 2.

7. More importantly, while the BWG report includes the auditor's conclusions regarding SBC/Ameritech's merger related costs and savings for the last three months of 1999, the accounting standards used to arrive at those conclusions have not been examined or

confidential portions of the audit, effective review has been delayed.

² Even with a shortened turn-around time of ten days on responses to discovery requests, only one round of discovery would be possible with the present schedule.

analyzed by intervening parties to this docket, including the parties comprising GCI. The express purpose of this docket, according to the Commission's initiating order and its Order in Docket 00-0260, is to afford the parties an opportunity to conduct such an analysis. The Commission's final determination of merger savings to be shared with SBC/Ameritech's customers depends almost entirely on the integrity and application of the accounting standards and processes developed by the third-party auditor. The parties need time to review these standards and processes in light of the relevant data.

8. In light of the due process problems attendant to the existing, expedited schedule, and its incompatibility with the Commission's prior Orders which recognize the need for contested case proceedings, GCI therefore requests that the Commission clarify the goals and logical sequence of events in this docket by adopting a two phase proceeding for the fair and efficient resolution of issues in this case and directing that (1) a determination of the appropriate accounting standards and processes occur in the first phase of this docket; (2) the application of those standards to SBC/Ameritech's 1999 and 2000 data and the reasonableness of the costs and savings accrued in those years will be litigated and determined in a second phase of the docket when audited 2000 data is available. In the second phase the Commission can also determine when and how the resulting merger savings will be incorporated into Illinois Bell's rates and how future merger savings will be determined and incorporated into future rates.

9. In furtherance of the Commission's goals, GCI recommends that in the first phase the parties will be afforded a full opportunity to first review and analyze the accounting

standards and processes described in the audit. The schedule for this first phase should be established in accordance with contested case principles, but need not be a protracted proceeding. A proposed schedule is attached as Exhibit A. The Commission should make a determination in this phase on the appropriate accounting standards and processes to be used in determining SBC/Ameritech's merger-related costs and savings.

10. GCI then recommends that the second phase of this proceeding address the actual application of the appropriate standards to the 1999 and 2000 merger data as well as the reasonableness of those costs and savings. The Staff's report states that the 2000 data will be produced by SBC/Ameritech in April, 2001 and that the audit of this data is not expected to be finished until October of 2001. Staff Report at 2. Accordingly, the Commission should set a schedule that permits evidentiary hearings with respect to that audit in accordance with contested case principles, as the Commission directed in its order in 00-0260. Additionally, this second phase of the proceeding should determine how past and future merger savings will be incorporated into customer rates, to the extent that this goal is not accomplished in any order issued by the Commission in the Ameritech Illinois alternative regulation review proceeding, Docket 98-0252/98-0335/00-0764 (consol.).

11. The prohibition against retroactive ratemaking is not an obstacle to a retroactive application of merger savings because the statute mandates that merger savings be allocated (220 ILCS 5.7-204) and the Commission has ordered that actual, rather than estimated, merger savings be allocated to Illinois ratepayers. *Order*, Docket No. 98-0555, at 147; see, e.g., United Cities Gas Co. v. Illinois Commerce Commission, 163 Ill.2d 1 (1994)(retroactive ratemaking not an obstacle to retroactive adjustment of gas costs as statute contemplated

retroactive review of actual data).

12. GCI has enclosed as Exhibit A a proposed schedule to reflect the first phase of the two-phase proceeding described above. This schedule will enable the Commission to determine audit standards and processes and still give the auditors sufficient time to prepare an audit report on 2000 data and parties the time to review the report, before the next annual price cap filing.

13. GCI also requests that the Commission consider waiving its rules permitting seven days for the filing of responses to Petitions for Interlocutory Review and instead set an expedited response schedule in order to bring this matter to the Commission's attention as soon as possible.

WHEREFORE, GCI requests that the Commission grant this Emergency Petition for Interlocutory Review, define the scope of this proceeding, and set the schedule for this docket as requested.

Respectfully submitted,

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March 5, 2001

Exhibit A to GCI Petition for
Interlocutory Review

GCI Proposed Schedule for Docket 01-0128

BWG testimony (including proprietary materials)	March 6, 2001
All parties' direct testimony	April 27, 2001
All parties' responsive testimony	May 23, 2001
Hearings	June 4-6, 2001
Initial briefs	June 22, 2001
Reply briefs	July 6, 2001
Hearing Examiners Proposed Order	July 20, 2001
Briefs on Exceptions	August 3, 2001
Reply briefs on exceptions	August 10, 2001
Final Order - August 28	